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ABSTRACT

This guide is designed to provide information about transitional child care (TCC) program policies and operations and to offer recommendations to policymakers and advocates. Transitional child care is a new federal child care program that every state must implement by April 1, 1990. Established by the Family Support Act (FSA) of 1988, TCC is designed to help families with dependent children meet their child care needs for one year after they lose federal or state financial assistance for income-related reasons. Recommendations are based on information from nine states with transitional child care programs that predate FSA requirements; extensive discussions with officials and advocates; and a review of 30 state plans for transitional child care programs. Sections of the guide concern: (1) the process of becoming eligible for transitional child care, and the related issues of notification, outreach, the request and approval process, verification, and reporting; (2) things to consider after eligibility is established, including child care counseling and location services, payment rates and policies, choice of a payment mechanism, and a sliding fee scale; and (3) long-range issues, including budgeting adequate funds, learning from experience, and arranging for child care after TCC participation. Appendices provide federal.regulations on TCCs and an overview of voucher and contracted payment mechanisms. (RH)

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Transitional Child Care: State Experiences and Emerging Policies Under the Family Support Act

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Introduction

The Children's Defense Fund (CDF) and the Center for Law and Social Policy (CLASP) jointly produced this publication to provide insight into transitional child care policies and operations and to offer recommendations to policy makers and advocates.

Transitional child care (TCC) is a new federal child care program that every state must have implemented by April 1, 1990. Established by the Family Support Act (FSA) of 1988, TCC is designed to help families that lose AFDC for income-related reasons to meet their child care needs for one year after AFDC ends.*/

While there was considerable controversy over other major elements of federal welfare reform, the TCC provisions of the Family Support Act were widely supported during congressional debate. Congressman Tom Downey (D-NY), a key architect of the law, noted that he and others were willing to compromise on other FSA provisions in order to secure TCC. According to Downey, "transitional child care is vital to effective welfare reform."

TCC is important because many parents who leave AFDC need help to pay for the child care that is essential to keep a job.

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*/Appendix A contains a copy of the complete TCC federal regulations. The FSA also created transitional Medicaid benefits for families that lose AFDC for employment-related reasons. For a complimentary copy of Transitional Medicaid Benefits under the Family Support Act of 1988, write Nancy Williams, CDF, 122 C St., NW, Washington, DC 20001.

Reports and studies from early state transitional child care efforts (generally pre-FSA) indicate the importance of child care in enabling AFDC parents to find and keep a job:

- In Washington state, two-thirds of the respondents in a 1986 survey of welfare recipients cited difficulties with child care arrangements as the primary problem in seeking and keeping jobs; more than three-quarters of those women surveyed who had given up job hunting cited child care problems as the reason.[1/]

- Two Florida studies concluded that "the provision of child care enabled AFDC recipients to become employed and go off welfare, and that continued child care assistance enabled them to be economically active and stay off welfare. The longer the enrollment in the child care program, the higher were the income gains. The gains appeared to slowly accrue after the first six months."[2/]

- In Massachusetts, a recent Urban Institute evaluation of the ET (Employment and Training) program revealed that parents with access to regular (formal or informal) child care are more likely to hold on to their jobs after leaving AFDC than those with no regular care or those with baby-sitters.[3/]

Many families who stop receiving AFDC due to earned income remain poor. In Florida, for example, a mother of two children will become ineligible for AFDC if her earned income is higher than $407/month--less than half the federal poverty level.[4/] Without assistance from a program such as TCC, child care costs are prohibitive for such families:

- A nationwide survey of child care costs in 1989 found that the average cost of full-time day care for one child in the U.S. was $3,432 -- ranging from about $2,400 in Tampa, Florida to $9,000 in New York City.[5/]

- A survey of full-time child costs as of March, 1990 in seven major cities found that the cost of center-based care for a four year old ranged from $60 per week ($3,120 per year) in Orlando, Florida to $138 per week ($7,176 per year) in Boston, Massachusetts.[6/]

TCC offers great promise for helping families struggling to retain employment. Financed through an open-ended stream of federal matching funds, TCC has the potential for dramatically increasing expenditures to help former AFDC families with their child care needs. Properly implemented, it can meaningfully inform families about opportunities for child care assistance, help them make informed decisions about what child care meets their needs, help them find that care, and help parents stay employed by paying for necessary child care. This guide makes recommendations about what TCC choices states should make to ensure that TCC lives up to its promise.

In developing our recommendations, CLASP and CDF contacted nine states with transitional child care programs that predate the FSA requirement: California, Florida, Iowa, Massachusetts, Minnesota, New Jersey, Rhode Island, Washington, and Wisconsin. Program administrators were generous with their time and insights based on their pre-FSA experience.*/

In addition to interviews with these TCC-experienced states, CLASP and CDF participated in TCC sessions held in Washington, D.C. as part of the American Public Welfare Association (APWA) quarterly meeting in February 1990. More than 15 states

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*/Many of these pre-FSA transitional programs, while similar in concept, differed significantly from the new TCC requirements. For example, the duration of assistance was shorter and there was less focus on reporting requirements; some of the states limited eligibility in ways that differ from the new federal program; and none had to deal with federal reimbursement rate rules.

participated in this discussion, which also included officials from Family Support Administration of the U.S. Department of Health and Human Services. Finally, we discussed drafts of this document in depth with officials and advocates in several states.

These discussions, as well as a review of 30 TCC state plans, revealed the TCC implementation questions states immediately face. We have designed our recommendations to help answer them. At the same time, there are certain limitations inherent in the publication. Notably, to date there is no federal policy in a number of critical areas. Federal officials reportedly are developing such guidance. Consequently, there may be new federal guidance that should be considered when reading the pages that follow. Also, since the federal TCC program is uncharted territory, this publication may miss some questions that will surface when states have more experience with the new TCC program.

CLASP and CDF wish to thank those state officials and others who generously gave us their time, attention, and insights. CDF and CLASP assume sole responsibility for recommendations contained here.

I. Becoming Eligible for Transitional Child Care

Eligibility

Who Is Eligible For TCC?

The FSA "guarantees" twelve months of child care necessary for a parent to work to families that lose AFDC for certain work-related reasons. This provision is an entitlement; **every** family that meets the eligibility criteria has a right to receive TCC benefits.*/

Generally, to be eligible for transitional child care under the FSA and implementing HHS regulations, a family must:

- include a child who is, or if needy would be, a dependent**/ child;
- need child care for employment: According to HHS regulations, only children under age 13 (and certain older children, including handicapped children) are eligible for child care assistance.

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*/The regulations that implement the FSA's child care guarantee take the position that the guarantee means a state must pay for an eligible family's child care (up to applicable payment limits), but that a state is not required to **create** child care, or to provide child care services directly, in order to satisfy the requirement that it guarantee child care. Final regulations, 54 Fed. Reg. 42146, 42217 (10/13/89).

**/A "dependent child" is a child who meets AFDC eligibility criteria (e.g., a child who is living with a relative and who is deprived of the support of a parent due to the parent's absence, incapacity, or death). In the case of a two-parent family, a child may be "dependent" if the principal wage earner meets statutory criteria for unemployment or under-employment. For most AFDC purposes, to be "dependent" a child must establish that he or she is needy by meeting certain income criteria. For TCC eligibility, the "needs" test does not apply (although family income is relevant after a family becomes eligible to determine the amount of the family's contribution under the sliding fee scale).

- have lost AFDC eligibility for an employment-related reason, i.e., increased hours of employment; increased income from employment; or expiration of the AFDC earned income disregards;

- have received AFDC in at least three of the six months immediately preceding the month in which the family became ineligible for aid; and,

- pay any amounts required under the state's child care sliding fee scale.

In addition, a family will not be eligible for TCC for any month after the caretaker relative:

- without good cause terminates his or her employment;

- fails to cooperate with the state in establishing and enforcing his or her child support obligations.[27]

Questions Concerning Eligibility

As states begin to implement TCC, advocates and administrators have flagged a number of eligibility questions. Some of these questions reflect problems with the basic statutory TCC provisions. They may have been inadvertent but can only be changed by a statutory amendment. For example,

- Some administrators have pointed out that they may deprive families of eligibility for TCC if they place a child in Head Start, or another subsidized program, and the parent has previously remained eligible for AFDC by claiming the child care disregard. If the family had income sufficient to take it off AFDC but for its child care costs, and the family then loses its deduction for child care because of the new, subsidized placement, it has lost AFDC due to loss of the child care disregard rather than due to loss of the work incentive disregards (the $30 and one-third deductions) or an increase in income. Therefore, the family does not qualify for TCC. The state's well-intentioned effort to place the child in high-quality, developmentally enriched care will have deprived the family of TCC eligibility which it may need for other children or to supplement Head Start. Administrators caution that workers should review eligibility considerations before making such placements.

- Families of migrant workers, and other families whose AFDC stays are brief, may have difficulties with TCC eligibility or be forced to lengthen their stays on AFDC. One Florida administrator pointed out that because the family must have received AFDC for three of the last six months to qualify for TCC, agency workers are placed in the anomalous position of either encouraging families to unduly lengthen their stay on AFDC in order to qualify for TCC, or finding families ineligible for TCC when they find employment quickly.

Other issues involving questions of statutory interpretation will have to be resolved by regulation, HHS action transmittals, or litigation.*/ Some of these questions are currently under review by HHS. Some of the key issues include:

- Does the family remain eligible for TCC if the family received AFDC and met the requirements for TCC eligibility in one state and then moves to another state after it has gone off the AFDC rolls? We believe it does, although an upcoming HHS policy interpretation may take a different position.

- If a family ceases to be ineligible for AFDC due to employment, but the official reason for case closing is failure to submit a monthly reporting form (because the parent knows she will be ineligible and therefore ceases to report), is the family eligible for TCC? HHS has not yet taken a position on this issue, but it is arguable that states should be allowed to change reasons for case closure (thereby making families eligible for TCC in some cases) if the case could have been closed due to earned income rather than due to failure to report.

- Which children are eligible for TCC? Some children are clearly covered under HHS regulations, but HHS indicates others are not, including young step-siblings who need care in order for a parent to work. A court may hold that the FSA does not allow such a narrow definition of eligibility. In addition, it is unclear

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*/These issues are discussed more fully in a paper entitled Transitional Child Care: Who's Eligible?. For a copy of this paper, send a pre-paid $3.00 order to Publications Department/CLASP, 1616 P Street, NW, Washington, DC 20036.

what happens to a child's eligibility if there are certain household changes -- for example, an absent parent comes back to live with the family.

- When does a family lose TCC because of its failure to cooperate in establishing and enforcing child support obligations? Should the state apply the child support case closure standards, effective October 1990, that apply to other non-AFDC child support clients, or should it apply the more punitive AFDC child support cooperation requirements? What counseling should be available to TCC families before they face such a loss? Many families who had little stake in child support enforcement while they were on AFDC may, if properly counseled about the benefits of child support enforcement, have a new interest in cooperation when they leave AFDC and understand that current child support payments will go directly to them.

State advocates and policymakers will have to grapple with these, and other, thorny eligibility issues as they implement their TCC programs.

Notification

Without effective notification, many eligible families likely will be unaware that TCC benefits are available. Past experience indicates that many welfare recipients do not know that child care benefits are available:

- A major study of the California GAIN program found that roughly 75 percent of client respondents recalled being told that GAIN would help them find child care and would pay for it while they were enrolled in education or training. Only 45 percent, however, reported knowing that TCC was available to help them after they left AFDC.[8/]

Notice Requirements

The FSA statute and regulations require states to inform AFDC families about TCC at several stages. The state agency must:

- Inform all applicants and recipients at application or redetermination (in writing and orally as appropriate).[9/]

- Notify all families of their potential eligibility for TCC at the time they become ineligible for AFDC. The notice requirement applies to families not in the JOBS programs as well as to families with a parent officially enrolled in state employment and training efforts. The notice (in writing and orally as appropriate) must tell families how to establish eligibility and inform them about their rights and responsibilities under TCC.[10/]

Notification Frequency

Families must be informed about TCC upon application or recertification for AFDC, and at termination of AFDC benefits. In addition to the FSA requirements, some states have recognized that there are other important TCC opportunities when families are most likely to be receptive to the TCC message. These times

include: when a recipient enters the JOBS program (Rhode Island) and when a recipient finds a job (Washington state). Such notification helps generate enthusiasm when a parent enters the JOBS program and provides confidence that necessary child care services will be there when the parent leaves AFDC.

Notifying families well in advance of termination of AFDC benefits helps ensure that the family has time to request and be approved for TCC benefits without a break in child care. Rhode Island notifies recipients 30 days and 10 days before JOBS child care is due to end. States often know beforehand when a family will lose AFDC due to time limits on the earned income ($30 and one-third) disregards. In such cases, the agency should notify the family that they may be eligible for TCC at least 30 days before termination, even if the state does not send a formal case closure notice until 10 days before termination of AFDC benefits (the minimum advance notice of termination provided by federal law).

Notices should include such basic information as the program's eligibility criteria; a contact person's name, address, and telephone number; and information about how to request TCC. In addition, on a periodic basis (such as quarterly) states should include the messages with AFDC checks.*/

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*/Notices should be clear and simple, in language that recipients understand. Washington state, for example, publishes program brochures in five languages to ensure that a wide range of recipients understand the notices.

States should also reach out to potentially eligible families whose cases are closed and who fail to request TCC benefits. Hawaii, for example, is in the process of developing a monthly computer-generated list of all cases closed due to earned income. Income maintenance workers who process TCC requests will use this report to identify and provide outreach to families who have not applied for the benefit.

Verbal Notification

In some cases, it may be more effective to provide information verbally to a recipient rather than to rely only on written notice, which may be overlooked if it is combined with a welter of information about other benefits and responsibilities. At a minimum, states should inform orally any client who has a JOBS case worker both when the client begins a job, and when it appears she will lose AFDC due to earned income. Every effort should be made to inform other groups verbally that may not have formal ties to case managers. These include parents who:

- received subsidized child care while participating in approved self-arranged education or training programs;
- received grants which were calculated using the child care disregard;
- had their cases closed due to increased hours or income from earnings or due to loss of the earned income disregards; or
- have cases about to be closed due to monthly reporting failures.

These recipients, while more difficult to reach, potentially are eligible for TCC and are most likely to fall through the cracks. Special efforts to make personal contact and to inform

them about TCC may significantly increase the likelihood that they obtain TCC services that help them keep a job.

Marketing

States have suggested "marketing" TCC benefits to families. Iowa, for example, discusses TCC benefits with recipients and stresses the way in which TCC benefits, combined with transitional Medicaid, help to maximize family income. Workers discuss with parents the specific amounts that are available through TCC, an approach the state agency believes has been effective.

Outreach

In addition to providing individual notice, states can help link recipients with TCC services by training and educating groups that have contact with recipients. These groups include AFDC and JOBS workers, child care and other service providers, legislators and advocates, and the community at large. Providers or caseworkers who understand TCC and who have an ongoing relationship with clients are likely to inform them in a meaningful way of the importance of TCC, and to advocate on their behalf to ensure that an eligible family receives timely assistance.

Unless AFDC (IV-A) workers understand the importance of subsidized child care, they may perform their job of informing potentially eligible families in a perfunctory way. Families may not understand the value of TCC because it is inadequately explained to them.

Effective outreach efforts begin with staff training at the direct service level. Washington state officials stressed their sense that increased staff training could result in increased TCC participation by FIP demonstration clients. In Pennsylvania, the state agency will show all caseworkers a training video designed to communicate to them the importance of TCC.

Every state should develop a worker training program that does the following:

- reviews eligibility for TCC;
- describes standard procedures for formal notification and personalized outreach;

- describes and discusses at length why day care is important to families--perhaps including a presentation by a day care provider or counselor, or by a post-AFDC parent who is receiving child care assistance;
- describes the request and approval process;
- outlines child care resource and referral services available; and,
- details the payment mechanisms, the amounts of assistance that can be provided, and the implications of choosing different payment mechanisms.

In some cases, non-AFDC service providers have more frequent contact with a family than does the public assistance worker. Groups such as child care providers and advocates, community college administrators, employment and training providers, early childhood groups, community action programs, and other community-based agencies should be educated about TCC through written materials, videotapes, briefing sessions, and conference workshops. Particular training efforts should be directed at administrators of child care programs who can inform families they serve about TCC, at resource and referral agencies that counsel families about opportunities for child care assistance, and at other state and local non-IV-A staff who deliver services (e.g., health, social services) to AFDC families. States may want to arrange to have child care resource and referral agencies provide information about TCC to licensed providers, so that the providers in turn can help link the families they serve with TCC.

In addition, outreach to employers can help link employees with transitional benefits, as well as convince employers that they should consider hiring AFDC participants because they will

have access to ongoing child care, thereby minimizing disruption when the employee leaves AFDC.

While individual notice and personal contact are the most important ways of informing families of the availability of TCC, states can also provide outreach through direct marketing strategies. They can use print and electronic messages so that recipients (and the general public) are reminded of the benefits of TCC. Brochures at laundromats, public service announcements on television and radio shows, videos in service agency waiting rooms, and posters in day care facilities could all be part of an outreach campaign.

Request and Approval Process

Regulations require that families "request" transitional child care benefits before states can find them eligible. States must respond to a TCC request within "a reasonable period of time."[11/]

The choices states make about what to treat as a "request" and how to structure the request process will determine how likely families are to get TCC benefits and how burdensome the process is for recipients and workers.

The regulations do not require a formal written application. States can instead provide benefits based on the kind of desk review used to determine ongoing AFDC eligibility.[12/] Regulations allow the request to be oral or in writing, so long as there is a specific request for TCC.[13/]

Since uninterrupted child care is essential if families are to remain employed, the request procedure should be streamlined to meet this need.

Several states indicate in the interim state TCC plans approved by HHS that they did not require a written request:

- Massachusetts generally does not require a written application;
- Texas generally does not require a written application. Clients access care by calling an intake office for their geographic area through local or toll-free telephone service;
- Vermont does not require a written application for families that meet basic eligibility criteria. Instead, the agency presumes there is a request for TCC, and instructs the family to notify the agency if it does not request TCC. Lack of notification by the family is interpreted as a request for TCC. If a

family is interpreted as a request for TCC. If a family does not request TCC when its case is initially closed, however, the family must submit an application form in order to receive TCC at a later date;

- California will allow all former AFDC families to make an oral request for TCC, so long as they received AFDC in the same county in which they are requesting TCC and make the oral request no later than seven days after they become eligible for TCC. The oral request will begin the approval process, but must be followed by a written request within 10 days in order for there to be a timely eligibility determination; and,

- Minnesota automatically redetermines eligibility of families that have received child care services to participate in JOBS. If the caretaker has not been receiving child care under JOBS, the family may request assistance either by telephone or in person.

These simplified request processes appear more likely to ensure that a family gets quick access to necessary services. States should allow families to trigger eligibility determinations with an oral request for TCC, or with a presumed request for TCC (as does Vermont). States may wish to require that families submit a subsequent written request, but should begin whatever timelines apply to the eligibility process on the date of the oral request.

If a state does elect to use a written application, the form should be short and clear. Mississippi is allowing families to apply for TCC by signing a one-sentence statement requesting TCC that is at the bottom of a notice sent to families leaving AFDC. For families that have just left AFDC, such a one-line request is appropriate since all other relevant information should already be in agency case files. In the case of a family that has been off AFDC for more than a month, or that previously received AFDC benefits in another state, the agency may wish to request

additional information on the application. Under no circumstances, however should the agency require information that does not change over time and that is already in the agency's possession (for example, whether the family received AFDC in three out of the six months preceding loss of AFDC).*/

Verifying and Approving Requests

States should set up a streamlined review process that relies as much as possible on current information already in agency files. Workers should be instructed to request verification from families only for those factors for which there is no information or verification in the files, the information is out of date, or the information has changed (for example, there is a change in the cost of child care because the family switched providers).**/

States should consider a "desk-review"-type process for families that request TCC within the first month after they leave

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*/In the case of a family that previously received AFDC in another state, HHS has indicated that states can accept a parent's declaration that he or she received AFDC for three out of the six months, although the state should make subsequent efforts to confirm this declaration. Preamble to final regulations, 54 Fed. Reg. at 42236-42237.

**/The regulations authorize a state to have different request processes for different types of cases. Requirements can vary "depending on the need of the State for eligibility and payment information. For example, a State that has current information about recipients might approve transitional child care and establish fees through a recertification process. In other cases, where the State does not have current information...the same State might require a full application." Preamble, 54 Fed. Reg. at 4237.

AFDC. The process should be more like a recertification than a new application. It need not require a personal interview (although in some instances a personal interview may be desirable as a way to link the family with child care counseling services they need to arrange post-AFDC child care). The process of scheduling intake interviews can slow the approval process and jeopardize child care arrangements necessary for employment.

If the state requires a personal interview, either for this group of families or for others requesting TCC, the agency should ensure that interview hours accommodate working parents, many of whom are still new on the job and can ill afford missed hours of work. Agencies should schedule interviews during lunchtime and evening hours, and on weekends when possible.*/

The request process for families that have been off AFDC for a longer period of time may need to be somewhat more formal, since the agency may be missing some key facts or verification. However, it, too, can be a relatively streamlined process, with most verification being obtained from case files already in the agency's possession. Unless the family is seeking retroactive as well as prospective benefits, very little additional information

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*/Based on a review of 30 interim state plans for TCC services, it appears that most states are not requiring a face-to-face interview. Arizona, New Hampshire, and West Virginia are requiring an in-person application by families that did not receive child care services while on the AFDC rolls.

will be required other than verification of current income and child care costs, a statement by the parent that he or she has not left a job without good cause, and a determination that the household continues to have a "dependent child" who qualifies for TCC. If the family has continued to receive Food Stamps or transitional Medicaid benefits, as is likely, the agency may already have current information in its files and may be able to proceed without additional recipient verification.

Workers who accept TCC requests should be instructed to inform families that already have left AFDC that they may be eligible for retroactive child care benefits, and to explain the process for documenting prior income and expenses.

Responding to Requests

The regulations provide that the state agency must respond to a request for child care within a reasonable period of time,[14/] but do not give guidance about what constitutes a reasonable time frame. Because uninterrupted child care arrangements are so important to a family's ability to keep employment, states should instruct caseworkers that they must act on a TCC request in a non-emergency situation no later than 10 days following the day of the request (so long as the recipient cooperates in establishing eligibility). Several states indicate in their interim state plans that they have set timelines for acting on requests that respond to recipients' needs for prompt determinations:

- Alaska will make an eligibility determination and send a notice to the family within 5 working days of receiving a TCC request form;

- Vermont requires a worker to approve TCC payments within 10 days of receipt of required forms and income verification;
- South Dakota requires TCC payment or notice of denial within 15 days of filing the completed forms; and
- Michigan has a 15 day standard of promptness for processing requests.

Payments should begin quickly after eligibility is established, although how quickly will depend in part on the reimbursement mechanism chosen by the state. Once eligibility is established, Massachusetts can issue a voucher to a known provider within 24 hours if necessary. Whatever the payment mechanism, the state approval of TCC child care should be in a form that will enable child care arrangements to begin immediately.

In addition to this generally applicable 10 day processing guideline, states should also have an expedited approval and payment process for families that will lose child care arrangements or be unable to accept or retain employment if TCC is not available on an expedited basis. Such an expedited process should allow for deferred verification if necessary. Courts may hold that states must have such an expedited process available in appropriate cases to comply with the FSA's requirement that they "guarantee" child care necessary to accept or retain employment.

If a recipient is potentially eligible for retroactive child care benefits as well as current benefits, the state may wish to consider setting the most rapid feasible time line for approving and beginning current benefits, and allowing a longer time line

for verifying eligibility for retroactive benefits and for providing those benefits. Separate time lines may make sense because verifying income and child care costs for the retroactive period may take more time than verifying current income and child care costs.

Reporting Failures

A number of administrators have expressed concerns that TCC-eligible families will not receive benefits because their cases will be closed due to reporting reasons rather than due to income-related reasons. Many families assume that they will lose AFDC when they find a job, and therefore simply cease any contact with the welfare agency. Their cases are closed for failure to report, even though they really should be closed due to earned income, thereby triggering TCC and transitional medicaid eligibility. It is important to establish the correct reason for case closing, since without transitional child care and Medicaid such families may lose their jobs.

Workers should be required to personally contact families whose cases are about to be closed for failure to report. The worker should be required to inform the parent orally and in writing about TCC benefits and to determine whether the case should be closed for income-related rather than reporting reasons. While such efforts are labor-intensive, they are crucial to ensure that eligible families get the support services to which they are entitled.

Some state administrators have indicated that they would like to be able to correct the reason given for termination if they discover within 30-60 days of case closure that the case should have been closed for income-related reasons but another reason for case closure was given. HHS has not taken a position on whether this policy is allowable. We strongly urge that HHS permit such corrections and that states systematically identify and correct cases that should be closed for income-related reasons rather than for reasons that do not trigger TCC eligibility. Such corrections are an important way of ensuring that eligible families are not denied needed benefits for procedural reasons, and a court may hold that such corrections are required as a matter of law.

Ongoing Verification and Reporting

Although the federal statute and regulations do not specify particular FSA verification or reporting requirements, federal regulations indicate that state FSA programs will be scrutinized for payment accuracy. States therefore want to develop procedures that will assure accurate determinations and avoid potential disallowances.

These procedures should protect program integrity, but must also assure that families' benefits are not jeopardized due to avoidable procedural burdens. Unduly burdensome verification requirements when a family first requests TCC can create a gap in child care assistance when the family has just left the AFDC rolls and needs stable child care arrangements. Similarly, unreasonable verification and reporting requirements increase the risk of reporting failures and loss of benefits even after a family is found eligible and continues to meet all of the other, substantive requirements for TCC.

Structuring A Workable Reporting System

Once a family has established initial eligibility, the state agency will need ongoing information about whether the family continues to be eligible, about whether the family's fee should be adjusted, and about whether there has been a change in the child care provider or in the amount that should be paid for child care.

Families should be asked to report information that is subject to change, that is accessible to the family, and that is

not otherwise reported to the agency. Particularly if a family's income goes down, or if child care costs increase, it is important that changes be processed promptly so that a family is not bearing more than its fair share of child care costs. The basic information recipients need to report includes the following:

- Termination of employment;
- A change in income that affects the sliding fee scale amount;
- A change in child care arrangements (e.g., a change in provider and/or cost of care, a change in the number of hours for which child care is needed);
- A change in family status that affects whether the child is still a dependent child (e.g., an absent parent returns home, or a parent in the home ceases to be incapacitated);
- A change in family composition that affects who is in need of child care (e.g., a child receiving care ceases to live in the home or a child needing care enters the home).

In several instances, information that the FSA makes relevant to ongoing eligibility for TCC is readily obtained from agency files or from other agencies. Such information should not be included in the family's reporting responsibilities. It includes:

- Failure to cooperate with child support enforcement efforts. The IV-D agency routinely reports such information on behalf of IV-A recipients, and similarly should serve as the source of information on child support cooperation for TCC purposes.
- Failure to pay sliding scale fees or to make satisfactory payment arrangements. Such information is more reliably obtained from the provider (if the provider collects fees) or from agency records (if fees are paid to the state agency).

- Failure to have a child in need of care because the child is 13 or over (the age at which federal regulations cut off TCC eligibility). Information about the age of the child is contained in agency records.

To simplify reporting requirements, states should only request information from client reporting that cannot be obtained easily through agency records or through reports by related agencies or providers. Client reporting should be restricted to information that is essential to determine ongoing eligibility and the correct fee amount. Also states should provide recipients with a postage-paid envelope addressed to the appropriate agency. The reporting form should be simple and easy to read.

Reducing the Reporting Burden

In addition to child care reporting, many families eligible for TCC also will be required to submit regular reports for Food Stamps and transitional Medicaid. States should explore possibilities for coordinating reporting and sharing information among these systems, so that recipients are not required to report essentially the same information to three different agencies on three different forms on three slightly different timetables.

Coordination efforts may include some or all of the following:

- A unified reporting form that elicits all the information that is needed to determine ongoing eligibility for the various programs;
- A system under which responses to a particular Food Stamp question (e.g., change in income) are communicated to the TCC agency or worker;

- An electronic information transfer between agencies; and,
- A single "transitional eligibility" worker who oversees continuing eligibility for both TCC and transitional Medicaid benefits.

California, for example, is coordinating TCC reporting with reporting for transitional Medicaid. Other states should explore similar coordination efforts, either through their Food Stamp program or their Medicaid program. In Pennsylvania, the state projects that 80 percent of TCC families will be Food Stamp recipients. Such an overlap indicates that unified Food Stamp/TCC reporting could be appropriate. Other states project a smaller degree of overlap.

Reporting Frequency

Federal regulations do not dictate how frequently states should require TCC recipients to report on their family status and income. States have four basic choices about how often to require recipient reporting: when changes occur; on a monthly basis; on a quarterly basis, with interim reporting also required when changes occur; and on a six-month basis, with interim reporting when changes occur.

In choosing among these options, states will have to balance the benefit of frequent reporting (to avoid incorrect payments or payments to ineligible families) against the substantial administrative costs and burdens imposed by frequent reporting. If most recipients do not have frequent or significant changes, monthly reporting does not make sense. It burdens workers with unnecessary paperwork and increases administrative costs. It is

a serious disservice to clients, since it is burdensome and increases the likelihood that otherwise eligible families will have benefits disrupted or denied due to reporting mix-ups.

States should use a quarterly or semi-annual reporting timetable, rather than requiring monthly reporting. Such reporting can be augmented with a requirement that recipients report interim developments that may affect basic eligibility or the amount of TCC benefits. If redeterminations are done on a quarterly or semi-annual basis, recipients should be able to trigger a more frequent review upon request. The timing of required reports, and the opportunity to request interim reviews, should be clearly explained to recipients.

A number of states report in their interim plans that they are using reports triggered by a change in circumstances, or on a quarterly or semi-annual basis:

- California is requiring TCC reporting on the same quarterly timetable as Medicaid transitional reports. Adjustments to TCC benefits will be made in the sixth month (based on the first quarterly report), although recipients can request more frequent reviews of their TCC benefits;
- Similarly, Vermont redetermines eligibility and the co-payment amount quarterly on the basis of information in the Medicaid transitional report form. In the case of clients that submit monthly Food Stamp reports, income and child care costs will be reported monthly and monthly adjustments will be made if necessary;
- Rhode Island and Connecticut review eligibility and fee amounts on a quarterly basis;
- Wisconsin does not have a schedule for redetermining eligibility, but requires clients to report significant changes within 10 days of their occurrence;

- Massachusetts reviews eligibility and co-payments during the second and sixth month of eligibility for clients served through voucher management agencies; and,

- New Hampshire reviews eligibility every six months (more frequently in the case of clients for whom it is otherwise redetermining eligibility for services such as transitional Medicaid). Clients must report a material change of circumstances within 10 days.

State Response To Reporting Problems

Reporting delays and verificati problems can and will arise. However, states should make every effort to minimize the risk of delayed or disrupted payments that may threaten child care arrangements and the parent's employment.

To avoid hasty termination of benefits, states should establish reasonable timelines for submitting necessary reports and verification. When a report or verification is late, the state agency should not take any action to delay or deny TCC benefits until the agency has provided the parent with reminders in writing (and, if necessary, by telephone). Indeed, because federal law does not make timely reporting a condition of eligibility, courts may conclude that states lack authority to deny benefits for a family merely because a report was not subm ted in a timely fashion. If the state does suspend or deny benefits based on late reporting, however, there should be a procedure for retroactive payment of benefits as soon as the recipient provides the necessary report.

II. After Eligibility is Established

Child Care Counseling and Location Services

States can provide child care counseling services to families eligible for TCC, and be reimbursed at the AFDC administrative matching rate (50 percent).[15/] Child care counseling can play an important role when families are in the process of being approved for TCC, and if problems arise later during the TCC period. When a family leaves AFDC, its child care needs may change. For example, the current provider may be unable to meet child care demands that increase along with working hours, or that change when job location makes a previous provider inaccessible. Child care counseling and location services may be key to ensuring that the shift from AFDC to TCC goes smoothly, and that the family's child care arrangements continue to meet the family's needs during the TCC period.

States can provide such services directly, or by contract with child care resource and referral agencies. Resource and referral agencies are typically private, non-profit agencies that provide a range of child care services, including counseling families about the benefits of different forms of child care, and how to make informed choices about what type of care will best meet the needs of child and parent; maintaining data bases about the providers and costs in a given area (and in some cases, about openings with these providers); operating voucher or contract programs that pay providers; and helping link a family with a child care provider.

These agencies, which often advocate for families when problems with providers arise, may effectively service TCC

clients. They can provide child care counseling, and can help link recipients with other forms of assistance when TCC benefits end. States should consider contracting with resource and referral agencies (or other qualified agencies) to provide such assistance when IV-A workers do not have the necessary expertise.

States have considered using non-IV-A agencies (either resource and referral services or other state or local agencies) to provide a range of child care services to TCC families--child care counseling and location assistance; operating contract or voucher programs that pay providers; and gathering information about local market rates.

Much of this activity (e.g., gathering data and providing counseling) is an allowable cost that is eligible for federal matching funds.[16/] However, states should be aware that resource and referral agencies cannot make a final determination about a family's eligibility for transitional child care, or about the amount the family must contribute according to the sliding fee scale.[*/]

[*/] The fact that the state cannot delegate discretionary decision-making does not prevent it from contracting with resource and referral (or other child care) agencies to provide all services related to transitional child care other than tasks such as the eligibility determination. Indeed, it appears possible that a state could pay a resource and referral agency to gather the information necessary to determine transitional eligibility, so long as the IV-A agency makes the final determination of TCC eligibility and the amount of the sliding scale fee. Alternatively, IV-A agencies can make eligibility determinations in-house, and refer families to resource and referral agencies for child care location and other services as soon as eligibility is established. Under either system, the state should be able to claim federal matching funds for services provided by the outside agency.

Federal law requires that there be a single state agency responsible for administering the AFDC plan. This agency cannot delegate its authority to make these kinds of discretionary decisions, which includes tasks such as determining eligibility for assistance.[17/]

Payment Rates and Policies

States must decide what payment rates to use for TCC. Under the FSA, states **must** pay the family's actual child care costs for TCC up to a maximum of $175 per month for older children, and $200 per month for children younger than two (unless the local market rate is below these figures). States **may** pay more than these figures, and federal matching funds are available up to the 75th percentile of the local market rate (which is typically significantly above the $175/$200 rates).

States may set separate market rates for higher-cost populations (such as special needs children) and may receive federal matching funds for paying up to 100 percent of the local market rate if there are only one or two local providers of a particular type of care. States must set a statewide limit on reimbursement.

State decisions about other payment policies -- such as how to calculate the rate for part-time care, and what attendance policy should govern payment -- also will affect the fairness of the state's rate system and its ability to attract providers.

Payment Rates

Based on national data and on state and local market surveys, the $175/$200 amounts are inadequate in many localities to purchase decent care. The quality of care depends in part on the training and experience of the caregiver. Low payment rates exacerbate high turnover rates among caregivers and thwart child care continuity for children who badly need stability in their

day-to-day lives. Moreover, low rates often mean a less favorable staff-to-child ratio for children from economically disadvantaged families who have so much to gain from high quality programs.

Since many states report severe shortages in their child care supply, improved rates will help attract new providers to the program. Competitive reimbursement rates will encourage providers to accept subsidized children. Longer range, realistic child care rates are also important to help preserve child care programs located in low income neighborhoods, where there are few parents who pay higher private fees that help the provider compensate for low state reimbursement rates.

In a CDF survey of the fifteen states that implemented JOBS on July 1, 1989, all but one reported that they were using market rates higher than the $175/$200 limits. Other states should follow their example.

Some states are setting different payment rates for TCC than the rates they pay for child care services to JOBS participants. As a matter of policy, states should provide TCC families with payment rates no lower than those applied to AFDC families. Lower rates for TCC families will limit their child care choices, and may force them to change arrangements they had established with a caregiver.

As a matter of law, a court may conclude that states are required to pay the same rates for the two groups. Paying a lower rate for transitional families than for AFDC families may be a violation of the FSA's guarantee of necessary child care for

families that leave the AFDC rolls due to earned income: if the state has made a determination that higher rates are necessary to obtain child care for families still on AFDC, it cannot fulfill its responsibility to guarantee care for transitional families by offering rates that the state itself has determined are inadequate to obtain necessary care. The regulations provide that provisions on child care matching rates for families on the AFDC rolls also apply to transitional child care. These regulations do not contemplate or authorize different rates for TCC families and AFDC families who need child care for employment, education, or training. Indeed, both groups are made eligible for child care assistance through a virtually identical "guarantee" of child care, and therefore should be viewed as "similarly situated."[18/] Failure to pay the same rate for TCC child care as for child care provided to AFDC recipients may violate a federal requirement for equitable treatment of "similarly situated" families.[19/]

States also should consider whether TCC (and JOBS child care) rates are as high as rates paid for other forms of subsidized care (such as Title XX). If rates are not comparable, states may find that they have difficulty attracting providers for TCC child care, since the providers will prefer to take other children at higher subsidized rates. In addition, children may be bumped from one provider to another when the source of their child care subsidy changes, since a provider willing to accept a child at a higher subsidized rate will not necessarily be willing to continue care if the rate drops. Some states are reporting

difficulties coordinating child care because of different rates. If there are different rates, the state, at least should raise the TCC rate to the higher rate paid for AFDC-linked child care, rather than penalizing both groups by lowering the rate.

States also should consider the approach taken by Massachusetts, which by regulation provides that the state cannot pay different rates (based on different funding streams) for the same service at the same provider.

Providing and Paying for Part-Time Care

Many parents will need only part-time care, a need that presents particular challenges to states because many providers are reluctant to accept children on a part-time basis. TCC policies that simply pro-rate the full-time reimbursement rate based on the number of hours a child is in care will increase provider reluctance to take part-time placements. Part-time care is often more costly to the provider: it is difficult to arrange for two part-timers to share a full-time slot, and if two part-time children do share a full-time slot, the provider incurs additional costs for recordkeeping, evaluations, and transportation to and from the daycare center (if the center provides transportation). In addition, since the hours of care needed by two part-time children may overlap, the provider may have additional staffing costs.

States should pay realistic part-time rates that are more than simply pro-rated versions of full-time rates. States can also improve access to part-time care by:

- Referring children who need part-time care to part-day Head Start or state-funded pre-kindergarten or Chapter I and other public school-based pre-kindergarten programs;
- Splitting of full-time slots when appropriate;
- Encouraging the creation of part-day programs if the demand warrants it; and,
- If no appropriate alternatives exist, permitting and paying for full-time care for families that need but are unable to find part-time care.

Attendance Policies

States should have attendance policies that recognize there will be periodic interruptions in child care due to illness or vacations, and that fairly compensate providers for these interruptions. Children often have minor illnesses--colds, strep throats, and childhood diseases such as chicken pox. Parents of other children in care and providers understandably do not want (and in many cases do not allow) them to be in day care. As a matter of public health, they should not be in care with healthy children while their disease is communicable. Yet a child care provider's costs remain almost constant whether a child is there on a particular day or not. Adequate staffing must be in place if a child is scheduled to be in attendance, even if the child is sick. Providers typically charge parents who pay privately for such absences. A policy for subsidized children that fails to similarly compensate providers will increase their reluctance to accept subsidized children.

States might allow payment for absences due to illness or vacations up to a threshold, such as five days a month. In such cases, where the absence may be due to a minor illness such as a cold, it does not make sense to require verification. Parents typically do not seek medical attention for such conditions, and a verification requirement simply further burdens a parent trying to juggle the demands of work and a sick child. Beyond the threshold, states may wish to require verification of illness before paying for additional days of care for which the child was absent. Iowa, for example, has developed a TCC agreement under which four days of child absence per calendar month is acceptable.

Choice of Payment Mechanism

In transitional child care (as in child care for AFDC recipients) states can choose to use a variety of payment mechanisms to pay parents or providers for the cost of care. The FSA authorizes use of mechanisms including contracts with providers to pay them for covered recipients, vouchers payable to the provider on a retrospective or prospective basis, purchase of service arrangements*/, prospective vouchers or cash payment to the parent, and reimbursement to the parent for past expenditures. The only reimbursement mechanism that is available under the AFDC program but **not** available under TCC is the child care disregard (although retrospective reimbursement to the parent is its TCC equivalent). A state's choice about which payment mechanism(s) to use can affect the numbers of providers willing to accept TCC clients, the stability of child care arrangements, and the ease with which families make the transition from AFDC-linked child care to TCC care.

States should use TCC payment mechanisms that are similar to those used to pay for child care for AFDC recipients. This reduces the risk of child care disruptions which would occur if a provider was unwilling or unable to accept a different payment mechanism. Moreover, states should have at least one expedited

*/ In some states, a purchase of service arrangement is essentially the same as a voucher payment to the provider. In others, it is more akin to a contract with the provider. For a discussion of voucher and contract mechanisms, see Appendix B.

payment mechanism for beginning TCC payments that will ensure that start-up delays do not cause families to lose child care.

If the same payment mechanisms are not available, at a minimum states should monitor families that will switch to new payment methods and provide assistance to ensure that child care arrangements are not disrupted.

A Range of Payment Mechanisms

We recommend that states offer a range of payment mechanisms that includes both vouchers and contracts. Vouchers, which can be redirected quickly from one provider to another, give recipients the flexibility to change child care arrangements easily as their child care needs change. Contracts help attract providers to the program and assure an ongoing supply of care by offering providers stable, prompt payment arrangements, and the security that if one subsidized child leaves the center, the child will typically be promptly replaced with another subsidized child. A CDF survey of the child care practices of the first 15 states to implement the JOBS program found that generally, states are offering a variety of payment mechanisms.

Under the FSA, states must have at least one mechanism that will allow parents to pay for self-arranged care.[20/] A number of states have compiled with this requirement by reimbursing the parent directly for the cost of self-arranged care. Disturbingly, some states are using retrospective payments to the parent as their sole reimbursement mechanism. In New Mexico, for example, TCC payments are made to the parent, but only after the parent has actually paid the provider. In New Mexico, AFDC

grants are so low ($264 a month of a family of three) that many families that leave the rolls due to earned income remain desperately poor. It is unlikely that many of them can afford to pay a provider $200 a month for infant care (the maximum allowed by the state) and then wait for reimbursement from the state. For such families, the promise of TCC is a hollow one. We strongly oppose a payment system that relies solely on retrospective payments to the parent.

Whatever the range of payment mechanisms, each state should have at least one mechanism that either pays in advance, or within seven to 10 days of billing. Such an expedited payment mechanism is crucial to encourage small center-based programs, independent family day care providers, and relatives to participate in the system. These small providers cannot afford to operate without immediate reimbursement or advance payment.

Simplifying the Payment Process

To avoid incorrect billings that delay payments, the billing and payment process should be as simple as possible. Child care providers should be given clear written directions, training on billing procedures, and places to contact when problems arise. When payment goes directly to parents, the parents should be clearly informed about their responsibilities for paying the provider and keeping child care expenditure records for purposes of state reimbursement and taxes.

When TCC Ends

Many families will need ongoing child care assistance when their TCC ends. States should consider whether the payment methods for TCC and for other subsidized care programs will allow families to enter post-TCC programs without delay and without changes of caregiver. For example, if a state's subsidized child care program pays only for contracted slots with certain providers and the family has been using a TCC voucher to pay a provider who does not have a contract with the state, the family's child care arrangements may be disrupted when TCC ends.

State agencies should counsel families about how to avoid interruptions or changes in child care if a TCC payment mechanism is not compatible with a subsidy program that offers post-TCC assistance. States may wish to use voucher payments as well as contracts in their Title XX (or state-subsidized child care system) as a way of easing families' transition from TCC to Title XX. This voucher mechanism can be a short-term solution for families waiting for a contracted Title XX slot, or it can be of unlimited duration (so long as the family remains eligible for subsidized care).

Structuring a Sliding Fee Scale System

The Family Support Act requires that states establish a TCC sliding fee scale (a co-payment) that is based on a family's ability to pay.[21/] HHS regulations give states great latitude in determining how to count income for purposes of assessing the fee and in establishing co-payment rates under the sliding fee scale.[22/] States also can decide whether payment should be made to the state agency or to the child care provider. Families that do not pay the required fee will lose TCC eligibility (after notice and the opportunity for a hearing), unless they make satisfactory arrangements to make full payment of back fees.

The sliding fee choices states make will determine how easy or difficult it is to calculate the amount of the fee, and how realistically the fee reflects the family's ability to pay. They also affect how readily a family can make the transition from TCC to another form of subsidized care and the willingness of providers to accept families whose care is funded through TCC.

Establishing the Family's Contribution under the Sliding Fee Scale

Federal regulations dictate that states must require at least a nominal contribution from **every** family receiving TCC. The reality is that very low income working parents cannot afford to make any contribution to child care and still meet other basic expenses. However, states will have to require some co-payment to comply with federal regulations.

Families whose gross earned income is less than federal poverty guidelines for a family of comparable size should be charged a nominal fee (for example, not to exceed $1 per month). States can and should vary the collection period so that families paying nominal fees can pay less frequently (for example, West Virginia collects co-payments of $10 or less per month on a quarterly basis; all other fees are collected on a monthly basis).

A number of states have elected to require very nominal fees for families with income below 100 percent of federal poverty guidelines. For example,

- Nevada requires families with below-poverty income to pay $1 per month;
- Rhode Island, Indiana, and West Virginia require $1 per week co-payments for families with below-poverty income (West Virginia charges 50 cents per week for part-time care); and
- Connecticut requires below-poverty families to pay $5 per month.

Fees should be increased gradually for families whose gross earned income is above federal poverty guidelines, so that an additional dollar of income does not create a huge difference in the amount of the co-payment. Connecticut's plan requires a monthly contribution of $5 for families whose earned income is below 100 percent of poverty; a contribution of $10 for families whose income is 101 - 150 percent of poverty; a $25 contribution for families at 151 - 175 percent of poverty; a $50 contribution for families at 176 - 200 percent of poverty; and contribution rates that increase gradually thereafter. By contrast, in Arkansas when a family's income changes from 50 to 51 percent of

state median income, the family's co-payment spikes up from 5 percent of the cost of care to 25 percent -- a $40 increase if care costs $200 per month.

States should adjust the sliding fee scale based on family size. The larger the family at any given income level, the less disposable income a family has to pay for child care. Fee contributions should be scaled accordingly.

In computing the fee, states also may wish to give parents a credit towards the co-payment for child care costs a parent pays out of pocket when the rate the state will pay is less than the actual cost of care. While HHS has not formally approved such an approach, it appears permissible given the very broad latitude HHS has given states in determining countable income and establishing a sliding fee scale, and since federal law only requires that families contribute to the cost of care.

A preliminary review of TCC state plans reveals extraordinary variations in the fees that will be assessed. A family of three with gross monthly income of $880 per month (100 percent of federal poverty guidelines) and one child in child care would pay a monthly co-payment of $4.33 in Indiana; $5.00 in Connecticut; $31.50 in New Mexico; $52.50 in Louisiana; and $100.00 in Oklahoma. The range of co-payments is a troubling indication that fees too often do not reflect ability to pay.

The TCC state plans highlight a number of model state practices. They also highlight some practices that raise serious concerns:

- A few states do not vary their co-payment based on family size, so that a family of two has the same co-payment as a family of seven with the same income. Failure to vary the scale based on family size means that the scale does not take into account the family's ability to pay.

- At least one state does not take into account the needs of more than one adult in the household. For example, if a family has two working parents and two children, the state will count all the family's income but calculate the fee as if the family were a unit of three. Under this system, the family appears to have more income available for a co-payment than is in fact the case.

- Some states do not establish a specific dollar amount for the co-payment. Instead, they provide that a family within a particular income range is required to pay a co-payment that is a certain percentage of the cost of care. In Louisiana, for example, a family of four with gross income of $951 per month (90 percent of federal poverty guidelines) must pay 50 percent of the cost of child care -- an amount that varies significantly based on the cost of care. Thus, for example, a family with two young children in care would pay a total co-payment of $200 per month for center-based care that costs $200 per child, but only $140 per month for care by a baby-sitter who charges $140 per month per child. For a family with below-poverty income, the $60 difference is so great that it may effectively deny parent choice, since the parent cannot afford the additional co-payment for center-based care. It will also result in different co-payments based on different types of child care -- differences that do not have any relationship to the parent's ability to pay, and that therefore may be illegal.

- In a related policy, Maryland explicitly varies the amount of the co-payment based on the type of care the parent chooses. For example, for a three-person family whose income is $17,258, the family's co-payment will be $42.50 for center-based care, and $29.50 per month for family day care. The difference in cost is based solely on the difference in the type of child care, and bears no relationship to the family's ability to pay. As in the case of a system that charges a percentage of the cost of care, it is likely to drive the parent to

choose lower-cost, and in some cases lower-quality care in order to avoid the higher co-payment. This result is particularly inappropriate in light of federal implementing regulations, which place a heavy emphasis on maximizing parent choice of child care.

- In a few states, the parent must make an additional co-payment for each additional child in care. This means that the more children the parent has in care, the greater the parent's co-payment burden will be, and the greater the possibility that the total co-payment exceeds the parent's ability to pay. Such additional charges should be avoided.

- Some states require parents to pay the full cost of care at income levels that are far too low. In Oklahoma, for example, a parent whose gross income is $1,041 per month (98 percent of federal poverty guidelines for a family of four) must pay the full cost of care. Families at such a low income level are clearly unable to bear the full cost, and such a scale clearly is not based on ability to pay. By contrast, in the Medicaid transitional provision Congress did not make families ineligible for partial assistance with their medical care until they reach 185 percent of federal poverty guidelines.

- Some states are assessing co-payments that are a percentage of the family's gross income. While in principle there is nothing wrong with this approach, in some cases the percentages are far too high. In Texas, for example, the state is proposing to require a TCC fee that is nine percent of a family's gross income for one child in care, and 11 percent for two children. The Texas AFDC grant for a family of three is only 23.4 percent of federal poverty guidelines. Families thus become ineligible for AFDC, and subject to the requirement that they contribute 9-11 percent of their income for TCC, with incomes far below poverty. By contrast, when Congress allowed states to charge families above the poverty line a premium for the last six months of transitional Medicaid benefits, Congress directed that the premium could not exceed three percent of the family's gross monthly earnings (less necessary child care costs).

States should avoid these practices in developing their final TCC plans.

Coordinating Sliding Fee Scales

In addition to their TCC sliding fee scales, many states have separate fee scales that apply to their Title XX and/or state-subsidized child care programs. In some cases, these fee scales developed haphazardly over time, are inequitable, and should not be replicated. In others, they are good models and states should make efforts to coordinate their TCC scales with these other programs.

Different fee scales for different programs are confusing to parent, provider, and child care worker. Moreover, if the TCC scale requires a **higher** parental co-payment than would be required under another fee scale, it might encourage families to seek care through other subsidized programs. This result would be unfortunate, since paying for child care with federally matched TCC funds allows state child care funds to reach two to three times as many families. If families potentially eligible for TCC use other forms of subsidized care instead, they will be exhausting child care resources that are typically capped or paid for with unmatched state funds.

Many states that we surveyed have chosen to make their sliding fee scales for TCC similar to scales used for other subsidized programs, often with some modification:

- Massachusetts will use the same sliding fee scales for TCC as for other subsidized child care programs;
- California will use a version of the State Education Department Office of Child Development sliding fee scale that has been modified in three ways: the fee for TCC will be half the Title XX fee; each family will be required to make at least a nominal co-payment for TCC (although the same family would have no

co-payment under Title XX); and, unlike Title XX, there is no income level above which families lose TCC eligibility;

- o New Jersey will use its Title XX preschool scale, rounded for payment convenience; and,
- o Florida will charge half of the Title XX rates for those at 100 - 150 percent of federal poverty guidelines and half of the contracted rate of reimbursement to the provider for those at 150-175 percent of federal poverty guidelines.

Where appropriate, TCC sliding fee scales should be similar to scales used for other subsidized child care programs in the state. States should, however, review such sliding fee scales carefully before adopting them. They were not necessarily developed to be compatible with welfare programs, and may be inequitable when applied to former welfare recipients. Any sliding fee scale adopted for TCC purposes must comply with the FSA requirement that it is based on ability to pay. A fee scale that requires such a large co-payment that the parent cannot afford to obtain child care violates the FSA requirement that child care must be guaranteed to eligible families.

Rules for Determining Income

The fairness of a state's sliding fee scale is determined not just by the fee scale itself, but also by the method a state uses to determine a family's income for purposes of calculating its co-payment.

States can choose to determine income using AFDC rules for counting income, or they can use a different methodology (including income rules established by other state child care programs).[23/] Preliminary verbal indications from HHS are that

states can use the same method for calculating income as they use for transitional Medicaid benefits (gross earned income, adjusted for actual child care costs). Based on available TCC state plans, it appears that many states are looking at gross earned income, or at gross earned and unearned income.

Whatever method a state chooses, it should ensure that the calculation of countable income and the determination of a fee is based on a family's ability to pay, so that the assistance of ered complies with the state's obligation to guarantee necessary child care. It should be at least as favorable to clients as the methods that were used to calculate their countable income while they were receiving AFDC.

The state's method for counting income should be simple, allowing for ongoing fee determinations with minimum client reporting and verification requirements, so that a family's ongoing eligibility is not jeopardized due to failures to report or verify unnecessarily complex fee-related information. If the state looks at gross, rather than net, income, at a minimum the state should deduct from gross income actual child care costs that the parent pays herself because they are more than the state rate will cover. Such a deduction is similar to the budgeting method for transitional Medicaid benefits, which considers gross income adjusted for actual child care costs.

Co-Payment Collection Policies And Procedures

In addition to establishing a fee scale and principles for determining countable income, states will have to decide how the

co-payment is collected, and the consequences for failing to pay on time. Final federal regulations give states at least three options about how to collect fees.[24/] They may:

(1) Require the fee to be paid to the state;

(2) Require the fee to be paid directly to the provider and have the state pay the provider the difference; or

(3) Pay the recipient the state's contribution and require her to pay the provider in full.

There are advantages and disadvantages to the different co-payment arrangements:

- Since parents have ongoing contact with the provider, paying the provider is the easiest form of co-payment for the parent. Many parents do not have checking accounts, and it is often simpler to pay the provider in cash than to visit the welfare office or to leave work to buy a money order that can be sent through the mail. Moreover, very limited delays in payment can be resolved directly with the provider.

- Direct payment to the state, however, may attract some providers who would otherwise be reluctant to risk going unpaid by the parent, or to do the additional accounting required if co-payment is made to the provider. Particularly if HHS requires frequent recalculation of the fee based on changes in income, providers may view collecting changing fees as a daunting task.

Where feasible, we recommend that parents make co-payments to the provider. States may minimize providers' concern about their exposure for unpaid co-payments by providing that if co-payments fall in arrears, the parent will be instructed to begin making payments to the state rather than to the provider. The state would reimburse the provider for any unpaid co-payments. The parent would then repay those unpaid co-payments to the state on a schedule negotiated between the parent and the state agency.

Whatever method the state uses to collect co-payments, the state should ensure that:

- Parents get a receipt from whomever accepts the co-payment. A receipt will be essential proof of child care expenditures for tax purposes at the end of the year.

- Nominal co-payments are collected on a less frequent basis than substantial co-payments, thereby minimizing accounting and paperwork burdens;

- There is a policy defining when co-payments are considered to be in arrears. This policy should be explained to the parent and, when appropriate, to the provider.

- There is a process for notifying the parent in writing when payments are in arrears and for offering the parent the opportunity to make payment in full or to negotiate a repayment schedule. Federal law provides that TCC benefits will be cut off (after notice and the opportunity for a hearing) if a family fails to pay its fees and does not make satisfactory arrangements to make up unpaid fees. Terminating child care benefits may cost the parent his or her job, so it is essential that there be a genuine effort to negotiate a repayment schedule. The state agency should not issue a notice of termination of TCC benefits until the family has been notified in writing that payments are in arrears, a worker has orally discussed repayment with the parent, and efforts to agree on satisfactory arrangements to make up unpaid fees have clearly broken down. Rhode Island, for example, is developing an automated system that will identify failure to make a co-payment. If the parent fails to make a co-payment, the agency will send a notice to the parent (with a copy to the provider) reminding the parent of the co-payment requirement.

- **We strongly urge that families should be permitted to make up unpaid fees over time, rather than required to make immediate payment in full, or in just one month's time.** The repayment schedule should be based on a realistic appraisal of the family's income and expenses, and should allow the family sufficient income to meet ongoing expenses while making repayment.

III. Transitional Child Care: Long-Range Issues

Budgeting Adequate Funds

Accurate budget forecasting is essential. Because eligible families have an **entitlement** to TCC, if initial budget requests are too low, the state agency will not be able to comply with the legal mandate to provide TCC, and will need to seek supplemental appropriations to comply. If budget projections are significantly higher than program utilization, the budget gap will create a sense that the program is unsuccessful. There may be an unwillingness to increase the budget as the demand grows over time.

Unfortunately, there is little reliable guidance on TCC budget demands. An early estimate by the Congressional Budget Office (CBO) projected that one-fourth of the families that leave AFDC each year will be eligible for TCC. Of eligible families, CBO projected that by 1991, 36 percent -- 280,000 children nationally -- will use TCC each month. CBO expects that the eligible children who do not participate in TCC "will continue to be placed in informal and unpaid child care arrangements."

CBO's projection on how much care is expected to be paid care is based on surveys of child care arrangements used by single working mothers in the early 1980s. Trends in arrangements, however, may vary over time. Families who otherwise could not have afforded to pay for child care may choose more formal child care arrangements as funding becomes available. CBO itself recognizes there are numerous questions regarding its assumptions.

Indeed, states' utilization experiences with pre-FSA programs often significantly differ from the CBO estimates. Massachusetts estimates that 28 percent of all job finders previously enrolled in ET used paid, formal child care in January, 1990. Wisconsin estimates 66 percent of AFDC recipients who find employment need TCC in a given month; Minnesota estimates 33 percent are eligible over the year and Florida reports that 70 percent of Project Independence participants placed in jobs in October 1989 were eligible for transitional benefits. While it is difficult to generalize from this data because the state pre-FSA programs often differ in many respects from the TCC required by the FSA, the data do indicate that demand may differ substantially from the CBO estimates.

States' pre-FSA experience yields some important lessons. Several states have made initial budget allocations that significantly exceeded initial demand. In Iowa, for example, $150,000 of a projected $2.6 million TCC budget was spent in FY 1989. The next year, anticipated spending increased to roughly $900,000. In California, of $12 million allocated for all GAIN and transitional child care in 1987 - 1988, only $7 million was spent. These initial overestimates reflect how state budget analysts are hampered by inadequate data. They also underscore an important lesson: initial demand may be low, as the program phases in. Initially, only a small group of families will be eligible, since TCC is limited to families that leave the AFDC rolls effective April 1, 1990. Moreover, demand will be limited,

since workers, providers, and recipients will have little familiarity with the program.

The corollary to this lesson, however, is that utilization should increase over time, as TCC systems improve and more families learn about the benefit. For example, Washington's demonstration program, FIP, has steadily increased its TCC participation from 30 percent of families in transitional status in July 1988 to 42 percent of such families in October 1989.

State budgets for TCC should recognize that initial demand may be low, but should plan for increased demand in coming fiscal years. States should communicate with each other to refine their budgeting methodology.

States should also study the child care arrangements and needs of their post-AFDC caseload to better predict and assess the numbers. This study should include data on monthly case closings due to employment; number of children younger than 13 per post-AFDC family; day care costs and utilization patterns of post-AFDC families by type of care; and numbers of slots in other subsidized child care programs (e.g., Head Start) that are available and used by former AFDC recipients.

Learning From Experience

TCC Implementation Is Far From Complete

Although all states were required to implement TCC on April 1, 1990, in many states implementation was a hasty process, through emergency regulation or program instruction. Worker training was limited at best in many states, and many workers still have little familiarity with the program. Many policy decisions were deferred or were made without the careful planning state administrators and advocates would have preferred. In some cases, the time limitations meant that policies from other child care programs were applied to TCC even though those policies are not necessarily the best or most appropriate ones. Although states had lead time to implement TCC, they discovered that in many respects TCC was an entirely new program that raised complex and unanswered implementation questions.

Based on this experience, we believe that in many states there will be refinements (and even major changes) in TCC programs as states develop a track record. This is a healthy process that should be encouraged and systematically undertaken.

States should appoint advisory committees to monitor TCC implementation and to periodically make recommendations for improvement. These committees should include agency representatives from the welfare agency, as well as from other state and local social service agencies; state legislators; educators; child care, Head Start, and early intervention providers and advocates; representatives of resource and referral

agencies; former and current AFDC recipients; and welfare advocates.

The state should collect and make available to the advisory committee data necessary to measure whether TCC implementation is successful. If program utilization is low and does not increase over time, program administrators and their advisory committee should attempt to identify barriers to use of the TCC program (e.g., lack of effective notice or outreach, cumbersome request or reporting process, low provider reimbursement rates, ineffective payment mechanisms, inadequate child care supply, unreasonable sliding fee scale). The state should make program adjustments to eliminate barriers that are identified.

Child Care Arrangements After TCC

Twelve months of TCC benefits will be an important help. We know, however, that after 12 months many families will have such limited earnings that they need continuing child care assistance in order to keep a job.

Most states recognize the continuing need, but are not adequately meeting it. In a CDF survey of the first 15 states to implement the JOBS program, 10 states indicated that subsidized care would be available to families after TCC benefits ended. In most instances, however, this simply meant that the state agency would refer the family to its Title XX or state-subsidized child care program.

Many of these programs have priority groups that include former AFDC working parents. However, many of them also have long waiting lists for Title XX or state-subsidized care. Arkansas, for example, reported having a waiting list of 1,500 families for its subsidized child care program; Wisconsin had a waiting list of 3,500; and Georgia had a waiting list of 5,000 in those counties in which subsidized child care is available at all. Thus, for many families it is likely that help will end after TCC, despite their continuing need and despite state referrals to other state programs.

Some states have been more successful in meeting the needs of families when TCC ends:

- Rhode Island reported that it did not anticipate a problem absorbing former TCC families into its low income subsidized program, which has grown from a $1 million budget to a $7 million budget in 3 1/2 years and does not have a waiting list.

- Minnesota will keep former TCC clients eligible for Title XX child care until their income exceeds 75 percent of the state median income, an extraordinarily important provision for continuing care. Sadly, however, this continuation of care is being funded through a reduction in intake for the state's employment and training program, which in the past has served a much broader population than is required under the FSA.

- Massachusetts has had a policy of providing continuing child care vouchers through the welfare agency to employment and training parents until a contracted slot becomes available to them through the state's non-AFDC subsidized child care program. With state budget cutbacks threatening the non-AFDC child care program, however, it appears that this practice will not continue.

Families' child care needs often do not disappear at the end of 12 months of TCC. To help keep families self-sufficient, states should document the continuing need of families for child care assistance and seek additional state dollars to provide child care when TCC ends. Recipient income information should be readily available to states since it will be reported to them for TCC purposes.

States should also make former TCC families a priority group for purposes of Title XX eligibility, as well as for benefits authorized by child care legislation now pending in Congress. In addition, the IV-A agency should negotiate with the Title XX agency to establish case transfer procedures so that there is not a gap in child care assistance when TCC ends.

Finally, states should help link families with other sources of child care assistance:

- Families should be informed, either by the welfare agency or through resource and referral agencies, of private child care scholarships that may be available,

as well as of the availability of the child care tax credit; and

- State agencies should work with employers to encourage them to offer cafeteria plans or other child care subsidies.

These efforts, while essential, are no substitute for additional federal assistance. Pending federal child care legislation should help states with additional resources to meet the need.

Notes

1. National Social Science and Law Center, Factors Affecting Employability of Welfare Recipients (1986).

2. Djehane A. Hosni, An Economic Analysis of Child Care Support to Low-Income Mothers (1979), and Child Care Assistance: A Labor Market Assessment of Recipients (1987)

3. Experienced Massachusetts ET JOBS Finders: Preliminary Findings, The Urban Institute, Demetria Nightingale, et al.

4. This example assumes that the parent's child care costs were paid for by the state, rather than by the parent through the child care disregard. It also assumes that the parent has worked for four months while receiving AFDC and therefore no longer can claim the one-third work incentive disregard.

5. Runzheimer International, News Release, April 17, 1989.

6. Child Care Information Exchange, April 1990 at 24.

7. 42 U.S.C. §§602(g)(1)(A)(ii), 617, 45 C.F.R. §256.2(b)(1).

8. The Manpower Demonstration Research Corporation, Child Care in a Welfare Employment Inititative, May, 1989.

9. Final regulations at §250.40(a)(2), published at 54 Fed. 42146 (October 13, 1989), to be codified at 45 C.F.R. §250.40(a)(2) (hereafter cited as codified).

10. 45 C.F.R. §256.4(c).

11. 45 C.F.R. §255.2(g)(2).

12. Preamble to final regulations, 54 Fed. Reg. 42237.

13. 45 C.F.R. §256.2(b). See also preamble to final regulation, 54 Fed. Reg. at 42237.

14. 45 C.F.R. §255.2(g)(2).

15. Preamble to final regulations, 54 Fed. Reg. at 42232.

16. Id.

17. 45 C.F.R. §205.100(b).

18. 45 C.F.R. §256.4(b).

19. 45 C.F.R. §233.10(a)(1).

20. 45 C.F.R. §255.3(d)(2).

21. 42 U.S.C. §617.

22. 45 C.F.R. §256.3

23. Preamble to final regulations, 54 Fed Reg. at 42239.

24. Preamble to final regulations, 54 Fed. Reg. at 42240.

§ 255.0 Purpose.

This Part pertains to child care and other supportive services for families receiving, and in some cases applying for, AFDC. State IV–A agencies must provide such services, under conditions specified in this Part, to eligible families to allow participation in employment, education or training.

§ 255.1 State plan requirements.

A State IV–A agency operating a program under title IV–A must submit a Supportive Services plan to the Secretary, consistent with the schedule specified at § 250.20, which includes the following:

(a) The methods the State IV–A agency will use to provide child care in accordance with § 255.3.

(b) The dollar amount(s) which the State IV–A agency establishes for limiting the amount of payment or reimbursement for child care, if the State IV–A agency elects pursuant to § 255.4(a)(1), to set an amount (or amounts) higher than the amount of the disregard at § 233.20(a)(11)(i).

(c) A description of the types of other supportive services and work-related expenses, including transportation, which will be available to participants in the JOBS program under Part 250 and other eligible recipients, the methods by which they will be provided, the monetary limits to be applied to each type of service or activity, and the basis for determining need for each type.

(d)(1) A description of the criteria which will be used to approve education or training for child care and supportive services in non-JOBS areas of the State, in accordance with § 255.2. Such criteria must, at a minimum, include:

(i) That the education or training is consistent with an appropriate employment goal; and

(ii) That the individual is making satisfactory progress.

(2) Specification of any procedures under which IV–A staff will approve, in non-JOBS areas:

(i) Education or training activities for child care and supportive services; and

(ii) One-time work-related expenses which are necessary for an applicant or recipient to accept or maintain employment.

(e) An assurance that procedures are established to ensure that:

(1) Child care meets applicable standards of State and local law, and/or Tribal law, where applicable;

(2) Any entity providing child care allows parental access as required under § 255.4(c)(1);

(3) In arranging child care, the State IV–A agency takes the individual needs of the child into account, in accordance with § 255.3(b); and

(4) Child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

(f) An assessment of the availability of child care services provided on a non-reimbursable basis by Federal, State and local sources other than title IV–A.

(g) Specification of a State IV–A agency's policies on:

(1) Interim child care and other supportive services as provided in § 255.2(d); and

(2) Transitional supportive services, as provided in § 250.73(e)(1).

(h) Specification of a State IV–A agency's policy on provision of one-time work-related expenses in accordance with § 255.2(c)(3), including:

(1) The types of any such expense;

(2) The monetary limits to be applied to such expenses; and

(3) Whether the State provides one-time work-related expenses in non-JOBS areas.

(i) A description of the methodology used for setting local market rates pursuant to § 255.4(a)(2). Such methodology must address rates established for each type of care (i.e., center, group family day care, family day care, and in-home care) provided. The plan must address variations in the costs of care for infants, toddlers, pre-school and school-age children, special needs children, whether care is full or part-time, and reduction in the cost of care for additional children in the same family if such variations exist. The rates must be submitted to the Family Support Administration Regional Office and must be updated periodically, but no less than biennially.

(j) A description of the nature of the State IV–A agency's efforts to coordinate child care and other supportive services, with the groups specified at § 255.3(h).

(k) In States where Tribal entities are directly funded to operate a JOBS program, a description of how the State will provide child care services for JOBS participants served by those Tribal entities.

(l)(1) A description of the State's procedures for ensuring that center-based care will be subject to State and local requirements designed to ensure basic health and safety, including fire safety, protections; or

(2) A plan for developing such procedures.

§ 255.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself or herself, as verified by the State based upon a determination by a physician or a licensed or certified psychologist; or under court supervision (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such child care is necessary to permit an AFDC eligible family member to—

(1) Accept employment or remain employed; or

(2) Participate in an approved education or training activity under JOBS (including self-initiated education or training pursuant to § 250.48(a)), or in approved education or training consistent with criteria in the State's Supportive Services plan for approval of education or training in non-JOBS areas.

(b) The guarantee under paragraph (a) also applies to Tribal members who are subject to participation requirements under Subpart J of Part 250, consistent with the requirement in paragraph (f).

(c)(1) The State IV–A agency must provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable an individual to participate in approved JOBS activities under Part 250, including self-initiated education or training pursuant to § 250.48(a)).

(2)(i) The State agency may provide, pay for, or reimburse transportation and other work-related expenses (including work-related supportive services) which it determines are necessary to enable a recipient to participate in approved education or training in non-JOBS areas;

(ii) Approval of education and training for necessary supportive services in non-JOBS areas must be consistent with criteria established in the Supportive Services plan.

(3)(i) The State agency may provide, pay for, or reimburse one-time, work-related expenses which it determines are necessary for an applicant or recipient to accept or maintain employment.

(ii) The State IV–A agency may approve these expenses through the JOBS program or, in non-JOBS areas, through procedures established in accordance with § 255.1(d)(2).

(d) The State IV–A agency may provide for child care and other necessary supportive services for an individual who is waiting to enter an approved education, training, or JOBS component or employment:

(1) For a period not to exceed two weeks; or

(2) For a period not to exceed one month where child care (or other services) arrangements would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(e) The State IV–A agency must provide child care and supportive services necessary:

(1) For applicants to participate in job search pursuant to § 250.60; and

(2) For applicants and recipients to participate in other approved activities to prepare them for participation in the JOBS program.

(f) The State IV–A agency must make child care services available to applicants and recipients who are participating in a JOBS program operated by an Indian Tribe or Alaska Native organization, pursuant to §§ 250.94 and 250.95. Child care services, which are also appropriate in meeting any special needs of Tribal participants, must be made available on an equitable basis. To the extent it is appropriate, the same range of reimbursement methods must be available to Tribal JOBS participants as are available to participants in the State JOBS program.

(g)(1) The State IV–A agency must inform families requesting child care under this Part of their rights and responsibilities.

(2) The State IV–A agency must respond to a request for child care under this Part within a reasonable period of time.

(h) AFDC applicants and recipients are entitled to hearings under the provisions of §§ 205.10 or 250.36, as appropriate, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce assistance under this part. However:

(1) Changes in the manner of payment are not subject to timely notice requirements unless they result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements; and

(2) The provisions of § 205.10(a)(6) regarding aid paid pending a hearing do not apply.

§ 255.3 Methods of providing child care and other supportive services.

(a) The State IV–A agency may use any of the following methods in guaranteeing the availability of child care:

(1) Providing the care directly;

(2) Arranging the care through providers by use of purchase of service contracts or vouchers;

(3) Providing cash or vouchers in advance to the caretaker relative in the family;

(4) Reimbursing the caretaker relative in the family;

(5) Arranging with other agencies and community volunteer groups for non-reimbursed care;

(6) Using the child care disregard as provided in § 233.20(a)(11)(i); or

(7) Adopting such other arrangements as the State IV–A agency deems appropriate.

(b) In arranging for child care, the State IV–A agency must take into account the individual needs of the child, including the reasonable accessibility of the care to the child's home and school, or caretaker's place of employment or training (based on normally accepted standards in the community or State), and the appropriateness of the care to the age and special needs of the child.

(c) If more than one type of child care is available, e.g., center, group family care, family day care or in-home care, the caretaker relative must be provided an opportunity to choose the arrangement. The State IV–A agency may select the method of payment under paragraph (a).

(d)(1) An individual required to participate under Part 250 may refuse available appropriate child care as determined by the State IV–A agency, if she can arrange other child care or can show that such refusal will not prevent or interfere with participation in approved education or training activities (including JOBS) or employment.

(2) The State IV–A agency must establish at least one method by which self-arranged child care can be paid.

(e)(1) If a State IV–A agency chooses to meet the cost of child care through a method other than use of the child care disregard at § 233.20(a)(11)(i), the State IV–A agency must then determine AFDC eligibility and payment amount without this disregard, except for families described in paragraph (e)(2) of this section.

(2) In the case of a family which was receiving AFDC on October 13, 1988, based on application of the child care disregard at § 233.20(a)(11)(i) or through the provision of special needs, if such a family would be disadvantaged as a result of meeting the cost of child care through another method which does directly affect AFDC eligibility, the State must determine the family's AFDC eligibility and payment (including child care needs), as if the method of provision which was applicable on October 13, 1988, is still in effect.

(f)(1) For cases subject to retrospective budgeting, the State IV–A agency has the option to meet the cost of child care directly for the first one or two months of employment and then to apply the child care disregard at § 233.20(a)(11)(i) to offset income received in those initial one or two months in determining the AFDC payment for the corresponding payment months. The State IV–A agency's payment shall not be counted as income or resources for any month. Under these circumstances, a State IV–A agency may not apply the disregard to income used to determine the amount of the payment for the month(s) following the month in which child care ceases.

(2) The State IV–A agency, at its option, may provide a supplemental payment to a family when the amount available through the disregard is less than the amount that would be available if another method were used.

(g) The State IV–A agency may assure the availability of necessary transportation and other work-related expenses (including other work-related supportive services) through direct provision, or payment, or reimbursement of costs consistent with its Supportive Services plan.

(h) Each State IV–A agency must coordinate:

(1) Its child care activities with existing child care resource and referral agencies and with early childhood education programs in the State, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); and

(2) Its supportive services with related services provided by other agencies.

§ 255.4 Allowable costs and matching rates.

(a) FFP is available for the actual cost of child care up to a statewide limit established by the State IV–A agency in its State Supportive Services plan, but not for more than the applicable local market rate.

(1) In setting the statewide limit:

(i) The State IV–A agency may choose the amount of the child care disregard at § 233.20(a)(11)(i), or some higher amount(s); and

(ii) The State agency may specify a higher statewide limit for children with special needs.

(2) The applicable local market rates must be determined:

(i) Based on representative samples of child care providers or slots;

(ii) For all political subdivisions or for alternative areas which represent reasonable local child care markets based upon their geographic proximity or common characteristics; and

(iii) Based on the 75th percentile cost of such types of care in the local areas. (However, where there are only one or two providers of a type of care in a local market area, the rate may be set at the 100th percentile.)

(3) Local market rates must:

(i) Be established for center care, group family care, family day care, and in-home care;

(ii) Differentiate among care for children with special needs, infants, toddlers, pre-school and school-age children, where applicable;

(iii) Differentiate between full-time and part-time care, if applicable; and

(iv) Consider reductions in the cost of care for additional children in the same family.

(b)(1) Except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, in the case of amounts expended for child care, FFP shall be at the Federal medical assistance program (Medicaid) rate and is included in the title IV-A general program entitlement.

(2) For Puerto Rico, Guam, the Virgin Islands, and American Samoa, the rate is 75 percent and is included in the JOBS limit of entitlement.

(c) FFP is available only if:

(1) The entity providing the care allows parental access; and

(2) The care meets applicable standards of State and local law, and/or Tribal law, where applicable.

(d) In the case of amounts expended for transportation and other work-related expenses and supportive services for eligible individuals, FFP shall be at the rate of 50 percent and is subject to the annual limit of entitlement, pursuant to § 250.73(b)(1).

(e) The State IV-A agency is not permitted to provide payment for child care or any other supportive service or work-related expense as an AFDC special need pursuant to § 233.20(a)(2)(v)(B)(2).

(f) FFP is not available for:

(1) Recruitment or training of child care providers, resource development, or licensing activities; or

(2) Payments made for care provided by parents, legal guardians, or members of the assistance unit (including essential persons).

(g) The matching rate for child care administrative costs under this Part is 50 percent and, except for Puerto Rico, Guam, the Virgin Islands, and American Samoa, the amount is outside the funding limitation for JOBS.

(h) The State IV-A agency must take reasonable precautions to guard against fraud and abuse in the funding of child care costs, consistent with requirements at § 235.110.

(i)(1) Federal matching funds improperly claimed for child care services or administration are subject to disallowance under Part 201. If the State IV-A agency disagrees with the decision to disallow FFP, it can appeal under existing title IV-A procedures, including review of the Departmental Appeals Board in accordance with Part 16 of these regulations.

(2) Financial reporting of child care expenditures is generally subject to the requirements of the existing regulations at § 201.5.

(3) Child care expenditures are generally subject to the requirements of Part 201, including the provisions at § 201.5(e) (regarding the applicability of most of the requirements of Part 74 to the administration of grants to States), the provisions at Subpart B (regarding review and audits), and the provisions of § 201.67 (regarding treatment of uncashed or cancelled checks).

(j)(1) The State must take all reasonable steps necessary to promptly correct any overpayment to a recipient or a service provider under this section (or Part 256). An overpayment to a family or provider currently receiving child care payments or benefits must be recovered through repayment (in part or in full) by the family or provider responsible for the overpayment or by recovering the overpayment through a reduction in the amount payable to the family or provider.

(2) State IV-A agencies need not attempt recovery of overpayments from providers if obligated to make the full payment under contract; however, FFP may not be claimed for such overpayments.

(3) In recovering overpayments from a recipient family, the State shall provide that the family retains, for any month, a reasonable amount of funds.

(4) Recoupment of child care overpayments may be made only from child care benefits; and recoupment of supportive services overpayments may be made only from supportive services benefits. Any recoveries of child care or supportive services overpayments may be made from AFDC benefit payments only upon a voluntary request of the recipient family.

(5) Overpayments to individuals may be recovered from the family unit which was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family. In cases of former recipients or recipients who refuse to repay, recovery shall be made by appropriate action under State law against the income and resources of the overpaid individual or family.

(6) Underpayments and overpayments may be offset against each other in correcting incorrect payments.

(7) Recovery must be attempted in all cases of fraud, in all cases involving current recipients, and in all cases where the overpayment amount would equal or exceed the costs of recovery.

(8) States must collect and maintain information on the collection of overpayments and make appropriate adjustments for Federal matching, consistent with requirements established by the Secretary.

§ 255.5 Child care standards.

(a) The State IV-A agency must establish procedures to ensure that center-based child care will be subject to State and local (and/or Tribal, where applicable) requirements designed to ensure basic health and safety (including fire safety) protections.

(b) The State must also endeavor to develop guidelines for family day care if it has not already done so.

(c) Upon request of the Secretary, the State IV-A agency must make available information on applicable standards of State and local law, including the requirements specified in paragraph (a) of this section and the guidelines specified in paragraph (b) of this section.

§ 255.6 Uniform reporting requirements for child care.

Each State IV-A agency shall be required to provide such child care information and data as are determined to be necessary by the Secretary to ensure the effective implementation of the provisions under this Part and Part 250. The uniform reporting requirements include, at a minimum, the average monthly number of families served, the types of such families, the amounts expended with respect to families assisted, the types of paid child care arrangements, and the length of time for which such families are assisted. The information and data for these families shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State IV-A plan and those who are not.

Title 45, chapter II, Code of Federal Regulations is amended by adding a new part 256 to read as follows:

PART 256—TRANSITIONAL CHILD CARE

Sec.
256.0 Purpose.
256.1 State plan requirements.
256.2 Eligibility.
256.3 Fee requirement.
256.4 Other provisions.

Authority: Sections 402, 403 and 1102 of the Social Security Act as amended (42 U.S.C. 602, 603 and 1302).

§ 256.0 Purpose.

This part pertains to child care available to families whose eligibility for AFDC assistance has ceased due to increased hours of, or earnings from, employment or as a result of the loss of income disregards due to the expiration of the time limits at § 233.20(a)(11).

§ 256.1 State plan requirements.

(a) The State Supportive Services plan specified under § 255.1 must include a description of:

(1) The methods the State IV–A agency will use to provide transitional child care;

(2) The sliding fee scale under which families will contribute toward the cost of child care;

(3) The methods and procedures the State IV–A agency shall use to ensure that fees are collected; and

(4) The application requirements established by the State.

(b) A State IV–A agency which has not implemented a JOBS program as of April 1, 1990 must submit a Supportive Services plan for transitional care which includes the provisions described in this Part and the provisions at § 255.1 which apply to transitional child care (i.e., paragraphs (a), (b), (e), (f), (i), (k) and (l)).

§ 256.2 Eligibility.

(a) The State IV–A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV–E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment.

(b) A family is eligible for transitional child care provided the following conditions are met:

(1) The family must have ceased to be eligible for AFDC as a result of increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations at § 233.20(a)(11);

(2) The family must have received AFDC in at least three of the six months immediately preceding the first month of ineligibility;

(3) The family requests transitional child care benefits, provides the information necessary for determining eligibility and fees, and meets appropriate application requirements established by the State; and

(4) The family ceased to be eligible for AFDC on or after April 1, 1990.

(c) Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period.

(d) The family is not eligible for child care under this Part for any remaining portion of the 12-month period if the caretaker relative:

(1) Terminates employment without good cause, as defined in § 250.35; or

(2) Fails to cooperate with the State IV–A agency in establishing payments and enforcing child support obligations, as defined in § 232.12.

(e)(1) If the caretaker relative loses a job with good cause, and then finds another job, the family can qualify for the remaining portion of the 12-month eligibility period.

(2) If the family re-establishes eligibility for AFDC during this period, it could qualify for a new 12-month eligibility period if it met the necessary conditions of eligibility (including the 3-of-6 month requirement).

§ 256.3 Fee requirement.

(a) The State IV–A agency must require each family receiving transitional child care to contribute toward the payment for such care based on the family's ability to pay.

(b) Each State IV–A agency shall establish a sliding fee scale which will provide for some level of contribution by all recipients.

(c) A State IV–A agency may vary the period of collection for different fee levels.

(d) The State IV–A agency may establish whether fees are paid to the providers or the State agency. In cases where the family's contribution is paid to the State IV–A agency, such contribution is subject to the program income requirements in § 74.42(c), Subpart F. Claims for Federal matching funds for child care expenditures shall be adjusted to reflect collection of fees under this Part.

(e) Individuals who fail to cooperate in paying required fees will, subject to appropriate notice and hearings requirements, lose eligibility for benefits under this Part for so long as back fees are owed, unless satisfactory arrangements are made to make full payment.

§ 256.4 Other provisions.

(a) The State IV–A agency, in providing transitional child care, must meet the requirements in §§ 255.3(a) paragraphs (1)–(5) and (7), (b), (c), (d), and (h); 255.5; and 255.6.

(b) The provisions on child care costs and matching rates at § 255.4 shall apply to this Part, except in the case of Puerto Rico, Guam, the Virgin Islands, and American Samoa, child care expenditures under this Part are not covered as JOBS expenditures, but as expenditures subject to the limitation under section 1108 of the Act.

(c) The State IV–A agency must notify all families of their potential eligibility for transitional child care services under this part in writing, and orally as appropriate, at the time they become ineligible for AFDC. The notification must include information on the steps they must take to establish eligibility for benefits and of their rights and responsibilities under the program.

(d) Provision of benefits under this part are subject to the notice and hearings provisions at § 205.10, except that timely notice requirements do not apply to changes in the manner of payment, unless those changes result in a discontinuation, suspension, reduction, or termination of benefits, or they force a change in child care arrangements.

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Appendix B

Voucher and Contracted Mechanisms

Many states beginning their TCC programs are enthusiastic about paying for TCC through a voucher or voucher/vendor-type mechanism. While such programs are in many respects desirable (and certainly preferable to retroactive reimbursement of parents), states should consider a payment system that combines vouchers and contracts, thereby building on the strengths of both payment mechanisms.

Voucher programs tend to be flexible in accomodating individual needs of children and families, and in responding to parental choice of a provider. Vouchers are also an extremely valuable mechanism for quickly meeting expanding demands for child care, since new providers can be brought into the system quickly. They are of particular value in geographic areas where a particular type of day care may only be needed occasionally.

However, under the voucher system a particular provider cannot be assured of a long term commitment for funding. Children come and go as a parent changes child care arrangements or loses eligibility for subsidized care. As one child leaves, there is no way of knowing whether that child will be immediately (or ever) replaced with another child. Because voucher payments provide such a fluctuating source of income, child care providers are reluctant to develop new sites or new programs based on projected vouchers.

Contracted or purchase agreement mechanisms are not always as responsive as vouchers in meeting the changing needs of children and parents, but they are a far more effective mechanism in developing new resources where needed and in providing a stable funding base for programs. With contract arrangements, providers know they have a steady and predictable source of funding, and that a child who leaves can be replaced with another subsidized child. This predictability is of particular importance in low income neighborhoods where few full tuition paying consumers can help tide the provider over when subsidized child care arrangements are disrupted. In such neighborhoods, a program has a great deal of difficulty building a stable funding base, and remaining open for the community, if vouchers are the sole payment mechanism.

In deciding which payment mechanism to use, states and counties must consider their own needs and available resources. Most will need a combination of vouchers and contracts. Each mechanism plays an important -- and complementary -- role in shaping a system that has a stable provider base; that responds quickly to changing family child care needs and choices; and that expands to meet demand.